IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1751 of 2004 AND W.P.NO.11139 OF 2003.

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W.A.NO. 1751 OF 2004:

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10/09/2004 in WPMP.NO.13902 OF 2003 & WVMP.NO.1857 OF 2004 IN WP NO : 11139 OF 2003 on the file of the High Court.)

Between:

1 Regional Provident Fund Commissioner (HQ),
Employees Provident Fund Organisation,
Bhavishyanidhi Bhavan, 14, Bhikaji Cama Place, New Delhi
2 The Assistant Provident Fund Commissioner, Employees Provident Fund Organisation,
Regional Office, Barkatpura, Hyderabad
3 The Recovery Officer, Employees Provident Fund Organisation,
Regional Office, Barkatpura, Hyderabad

..... APPELLANTS

AND

M/s Andhra Sinters Ltd., a company registered under the Companies Act, 1956 and having its registered Office
at Gudur Village, Bibinagar Mandal, Nalgonda District, rep.by Mr.V.Madhu

Mohan, Manager (P & R).

.....RESPONDENT

Counsel for the Appellants : MR.R.N.REDDY

Counsel for the Respondent : MR.P.BALAJI VARMA

WRIT PETITION NO : 11139 of 2003

Between:

M/s. Andhra Sinter Limited, A company registered undr the Companies Act, 1956
and having its registered office at Gudur Village, Bibinagar Mandal, Nalgonda District - 508 126, Rep. by Mr. V,. Madhu Mohan, Manager (P&A).

..... PETITIONER

AND

1 The Regional Provident Commissioner(HQ) Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place,
New Delhi - 110066.
2 The Assistant Provident Commissioner, Employees Provident Fund Organisation,
Regional Office, Barkatpura, Hyderabad - 500 027.
3 The Recovery Officer, Employees Provident Fund Organisation,
Regional Officer, Barkatpura, Hyderabad - 500 027.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of rejecting the application for waiver of damages levied under Section 14B of the PF Act and consequent demand to remit the entire damages amount outstanding immediately as it is arbitrary, unreasonable, violative of the provisions of the PF Act and SIC Act, principal of natural justice and Article 14 of Constitution of India.

Counsel for the Petitioner :MR.P.BALAJI VARMA

Counsel for the Respondents: Mr. R.N. Reddy.

The Court made the following :

ORAL JUDGMENT:

(per Hon'ble The Chief Justice)

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1. Appeal is against the order passed by the learned single Judge dated 10th September, 2004, dismissing WVMP.No.1857 of 2004 and allowing WPMP.No.13902 of 2003 and thereby making the interim order absolute during the pendency of the writ petition.

2. With the consent of the parties, we have taken up writ petition also for consideration along with this appeal.

3. Writ petition was filed by the respondent seeking to declare the action of the Regional Provident Fund Commissioner in rejecting application for waiver of damages levied under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') as arbitrary and violative of the provisions of the Act and Sick Industrial Companies (Special Provisions) Act, 1985.

4. An order under Section 14B levying damages and for interest under Section 7Q of the Act was passed against the writ petitioner - respondent. Instead of filing appeal against the said order, as provided under Section 7-I of the Act, writ petitioner, in order to have the amount of damages reduced or waived, addressed a communication on 26.03.2003 to the Central Provident Fund Commissioner praying that Central Provident Fund Commissioner may consider the case sympathetically and waive the damages. This representation in fact ought to have been addressed to the Central Board which is only empowered to reduce or waive the damages as per the provisions of Section 14B of the Act subject to the conditions being fulfilled.

The Commissioner dismissed the representation by communication dated 12.05.2003 which was challenged by the petitioner in the writ petition. Learned single Judge in the meanwhile stayed the recovery proceedings and on the appellants applying for vacation of the order, proceeded to pass the impugned order dismissing the vacate application and making the interim order absolute.

5. As a matter of fact, we are of the view that writ petition itself ought not and could not have been entertained in view of the alternative statutory remedy available to the writ petitioner to challenge the order of the Assistant Provident Fund Commissioner dated 17.02.2003 by preferring an appeal under Section 7-I of the Act. Irrespective of that alternative statutory remedy, petitioner could not make grievance against the order passed by the Regional Provident Fund Commissioner declining to reduce or waive the damages, which can be done only by the Central Board provided writ petitioner's establishment was a sick industrial company in respect of which scheme for rehabilitation has been sanctioned. Instead of addressing communication to the Central Board, communication was addressed to the Regional Provident Fund Commissioner who pointed out that petitioner not being a sick industrial company in respect of which scheme for rehabilitation has not been granted by the Board for Industrial and Financial Reconstruction. It is not the case of the petitioner that a scheme has been sanctioned by the Board for Industrial and Financial Reconstruction. Therefore, there are no grounds to challenge the order passed by the Regional Provident Fund Commissioner and for that reason, entertaining the writ petition will serve no purpose. Accordingly, we will dispose of the writ appeal as well as the writ petition with liberty reserved to the writ petitioner to question the legality and validity of the order of Assistant Provident Fund Commissioner dated 17.02.2003 by preferring an appeal. In case appeal is preferred within a period of 30 days from today, the same shall be entertained without raising an objection as to limitation.

6. We are informed that there is no Presiding Officer to hear and decide the appeals filed by the parties. Till appeal is taken up for consideration by the Presiding Officer, it is directed that recovery proceedings will not be enforced against the respondent – writ petitioner. No costs.

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DEVINDER GUPTA. C.J.,

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C.V. RAMULU. J.,

Dated: 17.11.2004.

VRK.

To

1 The Regional Provident Fund Commissioner (HQ),
Employees Provident Fund Organisation,
Bhavishyanidhi Bhavan, 14, Bhikaji Cama Place, New Delhi.

2 The Assistant Provident Fund Commissioner, Employees Provident Fund Organisation,
Regional Office, Barkatpura, Hyderabad
3 The Recovery Officer, Employees Provident Fund

Organisation,
Regional Office, Barkatpura, Hyderabad

4. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

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W.A.NO.1751 OF 2004

AND

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W.P.NO. 11139 OF 2003.

(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 17.11.2004.

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